



C.M.A.(MD).No.474 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 07.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.474 of 2016

and

C.M.P(MD) No.6096 of 2016

The Manager,
The United India Insurance Company Ltd.,
Venkateswara Shopping Complex,
South Car Street, Chidambaram
Branch Office:

The Divisional Manager,
The United India Insurance Company Ltd.,
Divisional Office – 1- Praminant Road,
Trichy.

..... 2nd Respondent/ Appellant

-VS-

1. James

.... Petitioner/1st Respondent

2. Arokia Alex

.... 1st Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P. No.961 of 2010, dated 18.10.2012, on the file of the Motor Accidents Claims Tribunal/ 1st Additional Sub Court, Trichy.

For Appellant : Mr.A.S.Mathialagan



C.M.A.(MD).No.474 of 2016

For Respondents : Mr.N.Sudhagar Nagaraj – for R1
: No appearance – for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the award of Rs.1,72,010/- (Rupees One Lakh Seventy Two Thousand and Ten only) passed by the Motor Accidents Claims Tribunal/ I Additional Sub Court, Trichy, towards the injuries sustained by the first respondent herein.

2. The first respondent/injured had filed M.C.O.P.No. 961 of 2010 claiming a compensation of a sum of Rs.2,00,000/- (Rupees Two Lakhs only) for the injuries sustained by him in the accident that had taken place on 24.02.2010. According to the claimant, when he was attempting to cross the road, the offending vehicle belonging to the second respondent in the appeal had come in a rash and negligent manner and hit against the claimant. The claimant was thrown away and he had sustained injuries on the backside of the head and also sustained fracture in his right leg.

3. According to the petitioner/first respondent, he was treated as in-patient for more than six days and he had incurred medical expenses to the



C.M.A.(MD).No.474 of 2016

sum of Rs.21,758/- (Rupees Twenty One Thousand Seven Hundred and Fifty Eight only). The petitioner has further claimed that he was working as a Tailor with a monthly income of Rs.6,000/- (Rupees Six Thousand only) and according to the petitioner, he has sustained permanent disability in the right knee and therefore, he could not work as a Tailor hereafter.

4. The insurance company had filed a counter contending that only due to the negligence on the part of the claimant this accident had taken place. The claimant should have been more careful while crossing the main road. However, without noticing the vehicles coming on either side, the claimant had carelessly rushed to cross the main road which has resulted in the accident.

5. The Tribunal, after considering the Ex.P2 to Ex.P4 Medical Reports and Ex.P5- Disability Certificate, has arrived at a finding that the claimant has sustained permanent disability to an extent of 67% and calculating Rs.2,000/- (Rupees Two Thousand only) for each percentage of disability, it had arrived at a quantum of Rs.1,34,000/- (Rupees One Lakh and Thirty Four Thousand only) towards permanent disability.



C.M.A.(MD).No.474 of 2016

WEB COPY

6. Towards medical expenses, the Tribunal has awarded Rs.21,758.25/- and for transport charges Rs.1000/- and for extra nourishment for a period of 15 days, a sum of Rs.2,250/- has been awarded. Challenging the said quantum on the ground of contributory negligence, the present appeal has been filed by the Insurance Company.

7. The learned counsel appearing for the appellant/Insurance Company contended that the claimant without noticing the vehicles coming on either side, had recklessly rushed to cross the road, which has resulted in the said accident. Therefore, contributory negligence has to be attributed to the claimant and the some percentage of the quantum of compensation should be deducted.

8. Per contra, the learned counsel appearing for the claimant/first respondent had pointed out that there was no pleading relating to contributory negligence in the counter and no documentary or oral documentary evidence let in on the side of the respondent Insurance Company.

9. I have carefully considered the submissions made by the learned counsel on either side.



C.M.A.(MD).No.474 of 2016

WEB COPY

10. The main ground, on which, the present appeal has been filed by the Insurance Company is that the contributory negligence on the part of the claimant was not considered. In Paragraph No.5 (ii) of the counter, the Insurance company has taken a specific stand that the claimant has suddenly crossed the road, without noticing the on coming vehicles.

11. A perusal of the Award passed by the Tribunal indicates that the respondent/ Insurance Company has not let in any oral evidence and hence the respondents side evidence was closed on 24.05.2012. Thereafter, the Insurance Company has filed an application for let in evidence, when the matter was posted for arguments. Allowing the said application, an opportunity was granted to the Insurance Company to let in oral evidence. On 27.06.2012, when the matter was posted for oral evidence, the Insurance Company has not examined any one and therefore, the evidence on the side of the Insurance Company was closed on the said date. The narration of the above said facts would clearly indicate that despite two opportunities being granted to the Insurance Company they have not chosen to let in any oral or documentary evidence to establish the fact of contributory negligence.



C.M.A.(MD).No.474 of 2016

WEB COPY

12. As far as, the quantum is concerned, the Tribunal has arrived at a specific finding that the claimant has sustained injuries in the right temporal bone which has resulted in 20% of the hearing impairment of the claimant. That apart, the right Tibia has also been damaged to such an extent that the claimant who is a tailor by profession would not be in a position to continue his avocation. Therefore, I do not find any illegality in fixing of the quantum by the Tribunal.

13. In view of the above said facts, I do not find any merit in the Civil Miscellaneous Appeal. Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

07.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To
1. The Motor Accidents Claims Tribunal/
The 1st Additional Sub Court,
Trichy.



WEB COPY



C.M.A.(MD).No.474 of 2016

R.VIJAYAKUMAR,J.

ebsi

C.M.A.(MD)No.474 of 2016

07.03.2023